

**STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS
Division of Workers' Compensation**

NOTICE OF MODIFICATION TO TEXT OF PROPOSED REGULATIONS

**Subject Matter of Regulations: Workers' Compensation –
Supplemental Job Displacement Benefits**

**CALIFORNIA CODE OF REGULATIONS,
TITLE 8, ARTICLES 6, 6.5, 7.5, and 8
SUPPLEMENTAL JOB DISPLACEMENT BENEFIT**

NOTICE IS HEREBY GIVEN that the Acting Administrative Director of the Division of Workers' Compensation (hereinafter "Acting Administrative Director") pursuant to the authority vested in her by Labor Code Sections 133, 4658.5, 4658.6, 4658.7 and 5307.3 proposes to modify the text of the following proposed regulations:

- Section 9813.1 Notice of Supplemental Job Displacement Benefit, Notice of Offer of Modified or Alternative Work for Injuries on or After January 1, 2004.
- Section 10116.9 Definitions for Articles 6.5 and 7.5
- Section 10117 Offer of Work; Adjustment of Permanent Disability Payments
- Section 10118 Form [DWC-AD 10118 "Notice of Offer of Work for Injuries Occurring Between 1/1/04 -12/31/12."]
- Section 10133.31 Requirement to Issue Supplemental Job Displacement Nontransferable Voucher for Injuries Occurring on or After January 1, 2013
- Section 10133.32 Form [DWC-AD 10133.32 "Supplemental Job Displacement Nontransferable Voucher for Injuries Occurring on or After 1/1/13"]
- Section 10133.33 Form [DWC-AD 10133.33 "Description of Employee's Job Duties"]
- Section 10133.34 Offer of Work for Injuries Occurring on or After January 1, 2013
- Section 10133.35 Form [DWC-AD 10133.35 "Notice of Offer of Work for Injuries Occurring on or After 1/1/13"]
- Section 10133.36 Form [DWC-AD 10133.36 "Physician's Return-to-Work & Voucher Report"]
- Section 10133.53 Form [DWC-AD 10133.53 "Notice of Offer of Modified or Alternative Work for Injuries Occurring Between 1/1/04 – 12/31/12"]
- Section 10133.55 Form [DWC-AD 10133.55 "Request for Dispute Resolution Before the Administrative Director"]
- Section 10133.56 Requirement to Issue Supplemental Job Displacement Nontransferable Training Voucher

- Section 10133.57 Supplemental Job Displacement Nontransferable Training Voucher Form for Injuries Occurring Between 1/1/04 – 12/31/12
Section 10133.58 State Approved or Accredited Schools
Section 10133.60 Termination of Claims Administrator's Liability for the Supplemental Job Displacement Voucher

PRESENTATION OF WRITTEN COMMENTS AND DEADLINE FOR SUBMISSION OF WRITTEN COMMENTS

Members of the public are invited to present written comments regarding these proposed modifications. **Only comments directly concerning the proposed modifications to the text of the regulations will be considered and responded to in the Final Statement of Reasons.**

Written comments should be addressed to:

Maureen Gray
Regulations Coordinator
Department of Industrial Relations
P.O. Box 420603
San Francisco, CA 94612

The Division's contact person must receive all written comments concerning the proposed modifications to the regulations no later than 5:00 p.m. on **May 31, 2013**. Written comments may be submitted via facsimile transmission (FAX), addressed to the above-named contact person at (510) 286-0687. Written comments may also be sent electronically (via e-mail) using the following e-mail address: dwcrules@dir.ca.gov.

AVAILABILITY OF TEXT OF REGULATIONS AND RULEMAKING FILE

Copies of the original text and modified text with modifications clearly indicated, and the entire rulemaking file, are currently available for inspection at the Department of Industrial Relations, Division of Workers' Compensation, 1515 Clay Street, 17th Floor, Oakland, California 94612, between 9:00 A.M. and 4:30 P.M., Monday through Friday.

The specific modifications proposed include changes to the text of the following regulations and forms:

- Section 9813.1 Notice of Supplemental Job Displacement Benefit, Notice of Offer of Modified or Alternative Work for Injuries on or After January 1, 2004.
Section 10116.9 Definitions for Articles 6.5 and 7.5
Section 10117 Offer of Work; Adjustment of Permanent Disability Payments

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Section 10118	Form [DWC-AD 10118 “Notice of Offer of Work for Injuries Occurring Between 1/1/04 -12/31/12”]
Section 10133.31	Requirement to Issue Supplemental Job Displacement Nontransferable Voucher for Injuries Occurring on or After January 1, 2013
Section 10133.32	Form [DWC-AD 10133.32 “Supplemental Job Displacement Nontransferable Voucher for Injuries Occurring on or After 1/1/13”]
Section 10133.33	Form [DWC-AD 10133.33 “Description of Employee’s Job Duties”]
Section 10133.34	Offer of Work for Injuries Occurring on or After January 1, 2013.
Section 10133.35	Form [DWC-AD 10133.35 “Notice of Offer of Work for Injuries Occurring on or After 1/1/13.”]
Section 10133.36	Form [DWC-AD 10133.36 “Physician’s Return-to-Work & Voucher Report”]
Section 10133.53	Form [DWC-AD 10133.53 “Notice of Offer of Modified or Alternative Work for Injuries Occurring Between 1/1/04 – 12/31/12”]
Section 10133.55	Form [DWC-AD 10133.55 “Request for Dispute Resolution Before the Administrative Director”]
Section 10133.56	Requirement to Issue Supplemental Job Displacement Nontransferable Training Voucher
Section 10133.57	Supplemental Job Displacement Nontransferable Training Voucher Form for Injuries Occurring Between 1/1/04 – 12/31/12
Section 10133.58	State Approved or Accredited Schools
Section 10133.60	Termination of Claims Administrator’s Liability for the Supplemental Job Displacement Voucher

DOCUMENTS SUPPORTING THE RULEMAKING FILE

Printouts of emails and correspondence to and from various interested parties concerning the Division’s proposed changes have been added to the rulemaking file.

FORMAT OF PROPOSED MODIFICATIONS

Proposed Text Noticed for Emergency Regulations:

The proposed text was indicated by underlining, thus: added language. Deletions ere indicated by strikethrough, thus: ~~deleted language~~.

Proposed Text Noticed for 45-Day Comment Period:

The proposed text was indicated by double underlining, thus: added language. Deletions ere indicated by double strikethrough, thus: ~~~~deleted language~~~~.

Proposed Text Noticed for 15-Day Comment Period on Modified Text:

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The proposed text is indicated by bold underlining, thus: **added language**. Deletions are indicated by bold strikeout, thus: ~~**deleted language**~~.

SUMMARY OF PROPOSED CHANGES

1. Section 9813.1. Notice of Offer of Modified or Alternative Work. For Injuries Between January 1, 2004 and December 31, 2012, Inclusive.

The word “Inclusive” was added to the title to clarify the exact time period.

2. Section 10116.9. Definitions for Articles 6.5 and 7.5

The word “Inclusive” was added to subdivision (k), referring to the name of Form DWC-AD 10133.53.

3. Section 10117. Offer of Work; Adjustment of Permanent Disability Payments.

The word “Inclusive” was added to subdivision (a) to clarify the exact time period. The claims administrator and employer may not become aware of the finally determined permanent and stationary date until the 60-day period to act has expired. To avoid ambiguity, the phrase “employer has knowledge” of permanent and stationary status has been added.

4. Section 10118. Form [DWC-AD 10118 “Notice of Offer of Work for Injuries Occurring Between 1/1/04 – 12/31/12.”]

The word “Inclusive” was added to the title to clarify the exact time period. “Retraining and Return to Work Unit” was deleted from the heading as that Unit no longer exists within the Division of Workers’ Compensation (DWC). DWC’s address was added for filing a Request for Dispute Resolution. On page 3, the case number field was deleted because case numbers may not be assigned at the time offers are made. Page 4 was edited for clarification. “I accept the offer and waive ~~my~~ **any** right to object to the job location.”

5. Section 10133.31. Requirement to Issue Supplemental Job Displacement Nontransferable Voucher for Injuries Occurring on or After 1/1/13.

Subdivisions (b)(1) and (b)(2) were deleted so as not to be duplicative with Section 10133.34. The subdivisions were renumbered to accommodate the change in the order. Subdivision (c) was added to clarify that if an injured worker loses no time from work or returns to his or her regular job no return-to-work offer need be made.

6. Section 10133.32. Form [DWC-AD 10133.32 “Supplemental Job Displacement Non-Transferable Voucher for Injuries Occurring on or After 1/1/13”]

The form has been stricken out in its entirety and a new version of the form will take its place.

The content on the first two pages of the form were moved to allow for all fillable parts of the form to be on the second page so that the injured worker does not have to photocopy the first page with submission of the second page to the claims administrator.

The Training Provider's Name blank was amended.

On page 4 an instruction was added, “Complete receipts of other documentation must be attached.” On pages 3 and 4, language was clarified from “~~The injured employee~~ requests...”

The proof of service was amended.

DWC's address was added for filing a Request for Dispute Resolution.

7. Section 10133.33. Form [DWC-AD 10133.33 “Description of Employee’s Job Duties”]

“Retraining and Return to Work Unit” was deleted from the heading as the unit no longer exists within the DWC.

8. Section 10133.34. Offer of Work for Injuries Occurring on or After 1/1/13

Subdivision (b) was deleted so as not to be duplicative with Section 10133.31.

9. Section 10133.35. Form [DWC-AD 10133.35 “Notice of Offer of Work for Injuries Occurring on or After 1/1/13.”]

“Retraining and Return to Work Unit” was deleted from the heading as the unit no longer exists within DWC.

Descriptions for filling in blanks were clarified. Duplicative “Name” fields were deleted.

Explanations that the injured worker has the right to object if the offer of work is for a different location or shift, and that seasonal work may be cumulative was added to the

form.

DWC's address was added for filing a Request for Dispute Resolution.

The format of the proof of service was amended.

10. Section 10133.36. Form [DWC-AD 10133.36 "Physician's Return-to-Work & Voucher Report."]

The form was amended to conform to the functional capacity assessment of the DWC Form PR-4 which primary treating physicians complete when declaring an injured worker permanent and stationary. A box was added to allow the physician to describe in what ways the impaired activities are limited.

The instructions were amended to indicate that only primary treating physicians, Agreed Medical Evaluators, or Qualified Medical Evaluators are responsible for filling out the form.

11. Section 10133.53. Form [DWC-AD 10133.53 "Notice of Offer of Modified or Alternative Work for Injuries Occurring Between 1/1/04 – 12/31/12."]

"Retraining and Return to Work Unit" was deleted from the heading as that Unit no longer exists within DWC.

The word "Inclusive" was added to the title to clarify the exact time period.

Descriptions for filling in blanks were clarified.

DWC's address was added for filing a Request for Dispute Resolution.

12. Section 10133.55 Form [DWC-AD 10133.55 "DWC-AD 10133.55 "Request for Dispute Resolution Before the Administrative Director."]

"Retraining and Return to Work Unit" was deleted from the heading as that Unit no longer exists within DWC.

A reason for filing for dispute resolution on page 3 was clarified to encompass objections to job offers and a reason was deleted as the reimbursement program is no longer in existence.

Instructions and a proof of service were added to the form.

13. Section 10133.57. Supplemental Job Displacement Nontransferable Training

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Voucher Form for Injuries Occurring between 1/1/04 and 12/31/12.

“Retraining and Return to Work Unit” was deleted from the heading as that Unit no longer exists within DWC.

The word “Inclusive” was added to the title to clarify the exact time period.

An instruction was corrected on page 2 because not all Training Providers have approval numbers and expiration dates.

DWC’s address was added for filing a Request for Dispute Resolution.

Information about Information and Assistance was added to the form.

14. Section 10133.58. State Approved or Accredited Schools.

The word “Inclusive” was added to the title to clarify the exact time period.

This section was amended to reflect changes to approval of eligible providers.

15. Section 10133.60. Termination of Claims Administrator’s Liability for the Supplemental Job Displacement Voucher.

Subdivision (a)(1) was amended to correctly state the requirements for offers of work set forth in section 10133.34.